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WASHINGTON, DC 20037-3213				
EXAMINER				
GARRETT, DAWN L				
ART UNIT		PAPER NUMBER		
1786				
NOTIFICATION DATE		DELIVERY MODE		
10/25/2010		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary**Application No.**

09/809,273

Applicant(s)

NISHII ET AL.

Examiner

Dawn Garrett

Art Unit

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Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 August 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 4, 10, 12, 13, 15 and 17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 4, 10, 12, 13, 15 and 17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 March 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SE/C.3)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114 was filed in this application after a decision by the Board of Patent Appeals and Interferences, but before the filing of a Notice of Appeal to the Court of Appeals for the Federal Circuit or the commencement of a civil action. Since this application is eligible for continued examination under 37 CFR 1.114 and the fee set forth in 37 CFR 1.17(e) has been timely paid, the appeal has been withdrawn pursuant to 37 CFR 1.114 and prosecution in this application has been reopened pursuant to 37 CFR 1.114. Applicant's submission filed on August 30, 2010 has been entered.
2. The amendment received August 30, 2010 has been entered. Claims 1 and 10 were amended. Claims 1-3, 5-9, 11, 14, 16 and 18 are canceled. Claims 4, 10, 12, 13, 15, and 17 are pending.
3. The rejection of claims 10, 12, and 17 under 35 U.S.C. 103(a) as being unpatentable over Wakamatsu et al. (US 4,667,814) in view of Biebuyck et al. (US 5,734,225) is withdrawn.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 4, 10, 12, 13, 15, and 17 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter

which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Independent claims 4 and 10 now recite a "flat container" wherein "said container consists of two flat sheets". Applicant indicates support for the added limitations may be found at page 8 of the specification and in Figure 2. The examiner submits the specific word "flat" does not appear on page 8. Additionally, Figure 2 shows sheets joined together, but the top sheet is not "flat" in terms of being planar. The top sheet comprises curved lines (12) that indicate the sheet (11) is not flat when filled with removing agent, which is a required component of the member for a device. Accordingly, the terms "flat container" and "said container consists of two flat sheets" is considered to comprise new matter.

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 4, 10, 12, 13, 15, and 17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The meaning of "flat container" and "consists of two flat sheet" is not understood, because the term "flat" is not set forth or described in the specification. Applicant previously indicated support for "made of two flat sheets" (now deleted from claims 4 and 10) is in Figure 2; however, Figure 2 does not show a flat container or flat sheets with respect to the conventional meaning of the term flat, because Figure 2 show a top sheet that has curvature. Where applicant

acts as his or her own lexicographer to specifically define a term of a claim contrary to its ordinary meaning, the written description must clearly redefine the claim term and set forth the uncommon definition so as to put one reasonably skilled in the art on notice that the applicant intended to so redefine that claim term. *Process Control Corp. v. HydReclaim Corp.*, 190 F.3d 1350, 1357, 52 USPQ2d 1029, 1033 (Fed. Cir. 1999). The term “flat” in claims 4 and 10 is used by the claim to mean a sheet that may not be planar when holding the removing agent (as shown in the Figure), while the accepted meaning is “having a horizontal surface without a slope, tilt or curvature or having a smooth, even, level surface.” The term “flat” is indefinite because the specification does not clearly redefine the term. Clarification is required. (See the thefreedictionary.com definition for the term “flat” provided with this Office action).

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

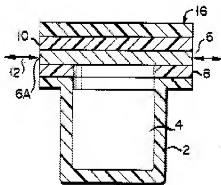
A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 4 and 13 are again rejected under 35 U.S.C. 102(b) as being anticipated by Wakamatsu et al. (US 4,667,814). Wakamatsu et al. discloses an oxygen absorbent packet comprising a plastic sheet (2) (“non-porous sheet”), adhesive (8) to seal (2) and (6), an air-permeable non-woven sheet (6) (see col. 2, lines 43-45; the “reinforcing layer” of “porous sheet”), an air-impermeable layer that may have pores (10)(see col. 3, lines 39-44; the “porous layer” of the “porous sheet”) and an aluminum foil covering (14) (alternatively also a “non-

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porous sheet"). Oxygen absorbent (4) is held in the container (per instant claim 13). See Figures 1 and 2.



Sheet (2) is considered to comprise a primarily "flat" portion having a smooth, even, level surface. This is the same type of sheet formation depicted in instant Figures 1 and 6 (showing some curvature of a sheet when holding a removing agent). Accordingly, the reference is considered to meet the claim requirements of a "flat" sheet.

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claim 15 is again rejected under 35 U.S.C. 103(a) as being unpatentable over Wakamatsu et al. (US 4,667,814). Wakamatsu et al. is relied upon as set forth above for the rejection of claim 4. Wakamatsu et al. fails to teach expressly the combined average pore size of the air-permeable non-woven sheet (6) (see col. 2, lines 43-45; the "reinforcing layer" of "porous

sheet”) and the air-impermeable layer that may have pores (10) (see col. 3, lines 39-44; the “porous layer” of the “porous sheet”) to form the “porous sheet”. Wakamatsu et al. does teach if a microporous film is used the pore size should range from 0.01 to 50 micrometers (see col. 2, lines 67-68) and that small pores are desirable (see col. 3, lines 39-43). It would have been obvious to one of ordinary skill in the art to have formed the sheet (6) and sheet (10) having pore sizes within the range of claim 15, because one would expect such a pore size to allow the desired amount of water and/or gases to pass through. Optimization of the pore size would result in allowing the desired amount of water and/or gases to pass through. Furthermore, the experimental modification of this prior art in order to ascertain optimum operating conditions fails to render applicants’ claims patentable in the absence of unexpected results. *In re Aller*, 105 USPQ 233. A prima facie case of obviousness may be rebutted where the results of the optimizing variable, which is known to be result-effective, are unexpectedly good. *In re Boesch and Slaney*, 205 USPQ 215.

12. Claims 10, 12, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jones et al. (US 6,069,443) in view of Wakamatsu et al. (US 4,667,814).

Jones et al. teaches organic light emitting devices comprising a sealing structure (see abstract). Jones et al. Figure 3 shows the light emitting device protected by an encapsulating structure and a getter film or layer to react with oxygen or moisture (40) (see col. 9, lines 27-39). Jones et al. discusses the importance of protecting an organic electroluminescent device from exposure to moisture and oxygen by encapsulating the device to avoid reducing the useful lifetime of the device (see col. 9, lines 18-26). Jones et al. does not specifically teach the getter

film comprising a multi-layered structure of claim 10. Wakamatsu et al. discloses in the art of protective packaging an oxygen absorbent packet comprising a plastic sheet (2) ("non-porous sheet"), adhesive (8) to seal (2) and (6), an air-permeable non-woven sheet (6) (see col. 2, lines 43-45; the "reinforcing layer" of "porous sheet"), an air-impermeable layer that may have pores (10)(see col. 3, lines 39-44; the "porous layer" of the "porous sheet") and an aluminum foil covering (14) (alternatively also a "non-porous sheet"). Oxygen absorbent (4) is held in the container. See Figures 1 and 2. Sheet (2) is considered to comprise a "flat" portion having a smooth, even, level surface. This is the same type of sheet formation depicted in instant Figures 1 and 6 (showing some curvature when holding a removing agent). Accordingly, the reference is considered to meet the claim requirements of a "flat" sheet. Wakamatsu et al. describe the packaging as being useful for sealing items to protect from oxygen. Wakamatsu et al. is silent with respect to teaching specifically the combined average pore size of the air-permeable non-woven sheet (6) (see col. 2, lines 43-45; the "reinforcing layer" of "porous sheet") and the air-impermeable layer that may have pores (10) (see col. 3, lines 39-44; the "porous layer" of the "porous sheet") to form the "porous sheet". Wakamatsu et al. does teach if a microporous film is used the pore size should range from 0.01 to 50 micrometers (see col. 2, lines 67-68) and that small pores are desirable (see col. 3, lines 39-43). It would have been obvious to one of ordinary skill in the art to have formed the sheet (6) and sheet (10) having pore sizes within the range of claim 17, because one would expect such a pore size to allow the desired amount of water and/or gases to pass through. Optimization of the pore size would result in allowing the desired amount of water and/or gases to pass through. Furthermore, the experimental modification of this prior art in order to ascertain optimum operating conditions fails to render applicants' claims

patentable in the absence of unexpected results. *In re Aller*, 105 USPQ 233. A prima facie case of obviousness may be rebutted where the results of the optimizing variable, which is known to be result-effective, are unexpectedly good. *In re Boesch and Slaney*, 205 USPQ 215.

It would have been obvious to one of ordinary skill in the art at the time of the invention to have placed an oxygen scavenger article taught by Wakamatsu et al. inside of the encapsulation structure for an organic electroluminescent device according to Jones et al., because Wakamatsu et al. teaches the article contains an antioxidant for protection against oxidation and one would expect the benefit of reduced degradation due to oxygen and moisture in the light emitting device.

Response to Arguments

13. Applicant's arguments filed August 30, 2010 have been fully considered but they are not persuasive.

Applicant argues Figure 1 shows a flat container that is not molded or shaped. The examiner submits Figure 1 shows a sheet with curvature rather than a "flat" (i.e. planar) container. Additionally, the examiner submits Figure 2 shows curvature at the dotted lines and accordingly does not show a "flat" container with respect to the conventional meaning of the word "flat".

Rejections over Wakamatsu have been set forth in this office action, because the container is shaped in a similar manner to hold removing agent in comparison to applicant's alleged "flat" container shown in instant Figures 1 and 2. The term "flat" in the claims has been

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rejected under 35 U.S.C. 112, first and second paragraphs, in this Office action, because the specification does not expressly set forth or define the term “flat”.

Applicant argues Wakamatsu discloses a blister molded cup-like plastic container. The examiner submits the term “molded” refers to a method for making the container. The claims are directed to a product not a process for forming an article. Furthermore, molded products are not expressly excluded from the claims.

Conclusion

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dawn Garrett whose telephone number is (571) 272-1523. The examiner can normally be reached Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, D. Lawrence Tarazano can be reached on (571) 272-1515. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Dawn Garrett/
Primary Examiner, Art Unit 1786

October 19, 2010